

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

APR 13 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2006-0312-PR
)	DEPARTMENT A
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ROBERT OTHA JOHNSON,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR-20041608 and CR-20041950

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Robert Otha Johnson

Florence
In Propria Persona

V Á S Q U E Z, Judge.

¶1 Pursuant to a plea agreement, petitioner Robert Johnson was convicted of two counts of aggravated DUI in separate matters.¹ After admitting he had one historical prior felony conviction, Johnson was sentenced to consecutive, presumptive prison terms totaling seven years. He filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim.

¹The trial court consolidated these into one matter.

P., 17 A.R.S., and argued in his petition that he is entitled to be resentenced based on a claim of newly discovered evidence or, in the alternative, ineffective assistance of trial counsel. The trial court dismissed Johnson's petition without an evidentiary hearing, and this petition for review followed. We will not disturb a trial court's ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find none here.

¶2 Johnson claims he would have received a reduced sentence if counsel had presented the trial court with newly discovered, mitigating evidence that he suffered from the advanced stages of Acquired Immune Deficiency Syndrome, a condition he concedes he knew about at sentencing, and that the Arizona Department of Corrections is unable to adequately care for him. He argues the evidence is either newly discovered under Rule 32.1(e) or that trial counsel was ineffective for failing to present sufficient mitigating evidence of his medical condition at sentencing.

¶3 In its ruling denying post-conviction relief, the judge, who had also sentenced Johnson, rejected Johnson's claims and noted that, because trial counsel had informed the court about the severity of Johnson's health situation more than once at sentencing, the evidence was not newly discovered, and therefore, counsel was not ineffective. The trial court denied relief in a detailed, thorough minute entry that clearly identified Johnson's arguments and ruled on them in a manner that is factually supported by the record before us and legally supported by the authorities cited therein. We therefore adopt the trial

court's ruling on Johnson's claims and see no need to revisit it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 We additionally note that, even if the court had not previously been fully apprised of Johnson's health issues, it surely was aware of them after having been presented with the more than 500 pages of medical exhibits Johnson attached to his Rule 32 petition. Moreover, in addition to the fact that trial counsel had informed the court about Johnson's health at sentencing, the trial court also noted that it had reviewed the presentence report, which contained similar information. And, Johnson did not raise this issue when the court asked him if he had anything to add at sentencing.

¶5 We grant the petition for review, but because we find no abuse of discretion in the trial court's denial of the petition for post-conviction relief, we deny relief.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

JOHN PELANDER, Chief Judge

JOSEPH W. HOWARD, Presiding Judge